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10/626,260	07/24/2003	Sidney M. Weiser	05485.105053	9583

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EXAMINER	
RUDDOCK, ULA CORINNA	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/626,260
Filing Date: July 24, 2003
Appellant(s): WEISER ET AL.

Lisa Sims
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 5, 2008, appealing from the Office action mailed September 18, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,855,650	BOHANNON, Jr.	2-2005
5,972,463	MARTIN et al.	10-1999
5,849,645	LANCASTER	12-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 3-8, and 18-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bohannon, Jr. (US 6,855,650) in view of Lancaster (US 5,849,645) and Martin et al. (US 5,972,463). Bohannon, Jr. discloses a synthetic fiber filled erosion control blanket. The netting and loose fiber filler construction permits blankets or mats of this kind to be fairly light in weight and also to permit the ingrowth of grasses and other vegetation into and through the blanket. The netting primarily serves to hold the loose fiber filler together (col 1, ln 56-61). It should be noted that the Examiner is equating the fiber filler of Bohannon, Jr. to the nonwoven mat of the present invention. The top and bottom sheets generally resemble an open-mesh material or netting and the filler material for use in the erosion control blanket is made up of a plurality of crimped polymer fibers which form a three-dimensional matrix between the top sheet and the bottom sheet. The filler material can be made of polyethylene terephthalate (col 2, ln 44-57). The netting is formed of polyethylene, polypropylene, or other suitable polyolefin (col 3, ln 56-59). The PET fibers of the fiber filler have a denier size of about 15-500 (col 5, ln 1-2) and a length of 5.75-6.25 inches (col 6, ln 61-64). The top and bottom sheets are stitched together (col 6, ln 61-62). Bohannon, Jr. discloses the claimed invention except for the teaching that the layers are stitched with a polymer yarn and that the mat comprises tri-lobal polymer fibers.

Martin et al. (US 5,972,463) disclose a web that is used as erosion control or civil engineering matting for retaining soil on embankments, dikes, and slopes and the like to protect them from erosion (col 7, ln 3-5). The multicomponent filaments of this invention can be circular or

round in cross section or non-circular or odd in cross section, e.g., lobal, elliptical, rectangular, and triangular (col 5, ln 7-27). More specifically, the cross sections can be trilobal (col 13, ln 64-66). As seen in Figure 14 of Martin et al., the fibers have at least three substantially concave and smoothly curved channels separating at least three substantially convex and smoothly curved lobes, as now required by the present invention. It should be noted that the trilobal fibers of Martin et al. in Figure 14 appear to be structurally similar to the trilobal fibers of the present invention, shown in Figure 3.

Lancaster (US 5,849,645) discloses a reinforced composite matting used for environmental soil erosion control (col 6, ln 28-29). The composite matting includes a bottom netting, fiber matrix, top netting that are secured together by stitching strands made of polyester black thread, thereby sandwiching and trapping the fiber matrix materials there between (col 5, ln 22-32).

It would have been obvious to have used the tri-lobal or multi-lobal fibers of Martin et al. and the polyester stitching thread of Lancaster in the erosion control blanket of Bohannon, Jr., motivated by the desire to create an erosion control blanket that has increased erosion controlling properties, increased soil-cohesion, and increased structural integrity due to the use of the multi-lobal fibers of Martin et al. and the polyester stitching thread of Lancaster.

Regarding Applicant's specific geometry/configuration limitations in independent claims 1 and 18, it is the Examiner's position that although the combination of Bohannon, Jr., Martin et al., and Lancaster fail to disclose the specific geometry/configuration set forth in the claims, it would have been an obvious design choice to one having ordinary skill in the erosion control art to have

made a fiber having the claimed specific fiber geometry and configuration, since a change in shape would have been prima facie obvious in the absence of new or unexpected results. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

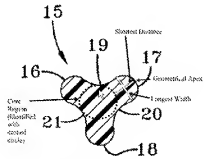
Furthermore, it should be noted that the transitional phrase "consisting essentially of" only excludes components that will affect the basic and novel characteristics of the invention and the burden is upon Applicant to show that the additional components do affect the basic and novel characteristics of the invention. MPEP 2111.03

(10) Response to Argument

Appellant argues that none of the cited prior art documents, alone or in combination, disclose, teach, or suggest the combination of: (1) at least one polymer net layer; and (2) a non-woven mat comprising a plurality of tri-lobal polymer fibers, wherein a cross-sectional geometry of respective ones of the tri-lobal polymer fibers consists essentially of: (a) a substantially circular, substantially uniform core region, (b) three substantially convex and smoothly curved elongated lobes substantially equally spaced about a circumference of the core region, each elongated lobe consisting of a single, substantially symmetrical half-ellipse shaped convex member disposed along a portion of the circumference of the core region, a shortest distance between a geometrical apex of the convex member and the portion of the circumference of the core region being substantially equal to a longest width of the convex member along a geometrical axis perpendicular to a geometrical axis defined by a shortest distance between the apex and the portion of the circumference of the core region, and (c) three substantially concave and smoothly curved

channels separating the elongated lobes, a portion of each smoothly curved channel comprising a plurality of points along the circumference of the core region, each smoothly curved channel being configured to capture at least one of sediment and water, to break up a flow and an energy of water passing over said soil and said mat, as presently recited in each of independent Claims 1 and 18.

This argument is not persuasive because it would have been an obvious design choice to one having ordinary skill in the erosion control art to have made a fiber having the claimed specific fiber geometry and configuration, since a change in shape would have been prima facie obvious in the absence of new or unexpected results. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). As seen above in the Martin et al. reference, Appellant was not the first to design a trilobal fiber for use in an erosion control blanket. Appellant's trilobal fiber is shown below (Figure 3) adjacent to the trilobal fiber of the prior art, Martin et al. (Figure 14).



FIG–3

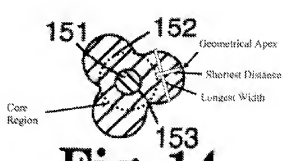


Fig. 14

As seen in these representative figures, Martin et al. teaches and/or fairly suggests the basic structure of Appellant's trilobal fibers. Furthermore, absent persuasive evidence that the particular configuration of the claimed geometry of the fiber is significant, a change in the depth or width of the valley in the fiber is an obvious design choice and would not generally affect the function of the fiber in an erosion control blanket. Appellant has not shown that the specific shape of the claimed trilobal fiber has any criticality. Therefore, the rejection is maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Ula C. Ruddock

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